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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 ARA V. MARUTYAN; ARTHUR
7 MARUTYAN; and DIANA MARUTYAN,
8 individuals,

Case No. 2:16-cv-01089-MMD-GWF

9 Plaintiffs,

ORDER

v.

10 LAS VEGAS METROPOLITAN POLICE
11 DEPARTMENT, DOES 1 through 10; and
ROE ENTITIES 1 through 10,

12 Defendants.

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14 **I. SUMMARY**

15 Before the Court are three motions: (1) Defendant Las Vegas Metropolitan Police
16 Department's ("LVMPD") Motion to Dismiss Plaintiffs' Section 1983 Claims for Violations
17 of Substantive Due Process, the Second Amendment, and the Fourth Amendment
18 Pursuant to Fed. R. Civ. P. 12(b)(6) ("Motion to Dismiss") (ECF No. 44); (2) Defendant
19 LVMPD's Motion to Dismiss, or in the Alternative, to Stay Proceedings During the
20 Pendency of Plaintiffs' State Court Case ("Motion to Stay") (ECF No. 45); and (3)
21 Plaintiffs Ara V. Marutyan, Arthur Marutyan, and Diana Marutyan's Motion for Evidentiary
22 Hearing (ECF No. 50). For the reasons discussed below, the Court grants Defendant's
23 Motion to Dismiss and denies Defendant's Motion to Stay as well as Plaintiffs' Motion for
24 Evidentiary Hearing.

25 **II. BACKGROUND**

26 Plaintiffs allege that LVMPD violated their Fourth Amendment and procedural due
27 process rights when police officers seized personal property during searches of their
28 home and Diana Marutyan's dorm room.

1 Plaintiffs allege that LVMPD officers executed search warrants at their home on
2 several occasions starting on February 13, 2014, and ending on March 27, 2014. (ECF
3 No. 43 at 2.) During these searches, the officers seized more than 100 items including
4 firearms, cell phones, computers, passports, social security cards, birth certificates, and
5 other documents.¹ (*Id.*) LVMPD executed a search warrant for the dorm room of Plaintiff
6 Diana Marutyan and seized a cell phone on April 3, 2014. (*Id.* at 3.)

7 Plaintiffs allege that they were never charged with a crime and that LVMPD never
8 commenced any civil forfeiture proceedings for the seized property. (*Id.* at 6.) Plaintiffs
9 further allege that they have contacted LVMPD many times in an attempt to recover their
10 property but have been unsuccessful. (*Id.* at 5.)

11 Plaintiffs filed a lawsuit in Clark County District Court (“State Suit”) on April 15,
12 2015. (ECF No. 31 at 2.) The State Suit sought return of the property, compensatory
13 damages, and attorney’s fees. (*Id.*) The court dismissed the case as a result of Plaintiffs’
14 continued failure to name an indispensable party, and that issue is currently on appeal
15 before the Nevada Supreme Court. (ECF No. 45 at 2.)

16 Plaintiffs initiated this action more than a year after filing the State Suit. (ECF No.
17 31 at 2.) This Court previously dismissed several of Plaintiffs’ claims. (*Id.* at 8.) Plaintiffs’
18 claims for violation of the Second Amendment and substantive due process rights were
19 dismissed with prejudice. (*Id.*) Plaintiffs’ claim for violation of the Fourth Amendment was
20 dismissed without prejudice and with leave to amend. (*Id.*)

21 **III. LEGAL STANDARD**

22 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which
23 relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must
24 provide “a short and plain statement of the claim showing that the pleader is entitled to
25 relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
26 While Rule 8 does not require detailed factual allegations, it demands more than “labels

27 ¹Plaintiffs’ passports and social security cards were returned after seven months.
28 (ECF No. 43 at 5.)

1 and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft*
2 *v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). “Factual allegations
3 must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S.
4 at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual
5 matter to “state a claim to relief that is plausible on its face.” *Id.* at 570.

6 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to
7 apply when considering motions to dismiss. First, a district court must accept as true all
8 well-pleaded factual allegations—but not legal conclusions—in the complaint. *Id.* at 678.
9 Mere recitals of the elements of a cause of action, supported only by conclusory
10 statements, do not suffice. *Id.* Second, a district court must consider whether the factual
11 allegations in the complaint allege a plausible claim for relief. *Id.* at 679. A claim is
12 facially plausible when the plaintiff’s complaint alleges facts that allow a court to draw a
13 reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 678.
14 Where the complaint does not permit the court to infer more than the mere possibility of
15 misconduct, the complaint has alleged—but has not shown—that the pleader is entitled
16 to relief. *Id.* at 679. When the claims in a complaint have not crossed the line from
17 conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

18 Allegations in *pro se* complaints are held to less stringent standards than formal
19 pleadings drafted by lawyers and must be liberally construed. See *Hamilton v. Brown*,
20 630 F.3d 889, 893 (9th Cir. 2011). Nevertheless, a plaintiff must still present factual
21 allegations sufficient to state a plausible claim for relief. *Hebbe v. Pliler*, 627 F.3d 338,
22 341–42 (9th Cir. 2010).

23 **IV. DEFENDANT’S MOTION TO STAY (ECF No. 45)**

24 Defendant argues that this Court should abstain from hearing this case based on
25 the *Pullman*² abstention doctrine and the State Suit appeal pending before the Nevada
26 Supreme Court. (ECF No. 45 at 4.) “*Pullman* abstention ‘is an extraordinary and narrow
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28 ²*R.R. Comm’n of Texas v. Pullman Co.*, 312 U.S. 496 (1941).

1 exception to the duty of a district court to adjudicate a controversy.” *Courthouse News*
2 *Serv. v. Planet*, 750 F.3d 776, 783 (9th Cir. 2014) (quoting *Wolfson v. Brammer*, 616
3 F.3d 1045, 1066 (9th Cir. 2010)). Three requirements must be satisfied for this Court to
4 exercise discretion to abstain under *Pullman*:

5 (1) the case touches on a sensitive area of social policy upon which the
6 federal courts ought not enter unless no alternative to its adjudication is
7 open, (2) constitutional adjudication plainly can be avoided if a definite
8 ruling on the state issue would terminate the controversy, and (3) the
proper resolution of the possible determinative issue of state law is
uncertain.

9 *Courthouse News Serv.*, 750 F.3d at 783–84 (quoting *Porter v. Jones*, 319 F.3d 483,
10 492 (9th Cir. 2003)).

11 Defendant’s argument related to the first requirement—that the case touch on a
12 sensitive area of social policy—is non-sequitur. Instead of identifying a sensitive area of
13 social policy to which this case relates, Defendant argues that proceeding with this
14 action will “create piecemeal litigation and affect the due process rights of Ms.
15 Mrktchayan [sic].” (ECF No. 45 at 5.) Defendant does not describe how these issues
16 relate to sensitive areas of social policy “such as land use planning, landlord-tenant
17 relationships, foreclosure policy, and death penalty procedures.” *McCoy v. Holguin*, No.
18 1:15-cv-00768-DAD-MJS (PC), 2017 WL 5495787, at *2 (E.D. Cal. Aug. 21, 2017),
19 *report and recommendation adopted*, No. 1:15-cv-00768-DAD-MJS, 2017 WL 5483979
20 (E.D. Cal. Nov. 15, 2017).

21 Defendant further argues that the second requirement is satisfied because the
22 Nevada Supreme Court’s decision in the State Suit could terminate the parties’
23 controversy. (ECF No. 45 at 3.) However, the appeal relates to the state court’s
24 dismissal of the action for failure to join an indispensable party. (See *id.* at 2.) The issue
25 before this Court—whether Defendant violated Plaintiffs’ constitutional rights—is entirely
26 different. Accordingly, the Court finds Defendant’s argument that the Nevada Supreme
27 Court’s decision could terminate the controversy to be unpersuasive.

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1 Defendant further argues that the third requirement is satisfied because a
2 question of state law is on appeal. (*Id.* at 5.) However, Defendant has not explained how
3 the Nevada Supreme Court's resolution of this state law question would obviate the
4 need to decide the constitutional questions presented here.

5 Accordingly, the Court finds that it cannot exercise discretion to abstain from
6 hearing this case because the *Pullman* requirements are not satisfied.

7 **V. DEFENDANT'S MOTION TO DISMISS (ECF No. 44)**

8 **A. Dismissed Claims**

9 Defendant contends that Plaintiffs' First Amended Complaint ("FAC") contains
10 claims for violation of the Second Amendment and substantive due process rights and
11 argues for their dismissal based on the Court's prior order. (ECF No. 44 at 4.) It is not
12 entirely clear that Plaintiffs' FAC contains such claims—the words "Second Amendment"
13 and "substantive due process" do not appear in the FAC. (See ECF No. 43 at 1-8.)
14 Nevertheless, to the extent that the Complaint contains such claims, they are dismissed
15 based on the Court's prior order dismissing these claims with prejudice. (ECF No. 31 at
16 8.)

17 **B. Fourth Amendment**

18 Defendant next argues that Plaintiffs' claim for violation of the Fourth Amendment
19 should be dismissed with prejudice because the FAC contains only two new allegations.
20 (ECF No. 44 at 6.) The first: LVMPD executed search and seizure warrants on several
21 dates in early 2014 based on sealed affidavits, seizing personal property including nearly
22 \$100,000 in cash. (*Id.*) The second: Plaintiffs' wire communications were intercepted and
23 monitored. (*Id.*)

24 This Court previously dismissed Plaintiffs' Fourth Amendment claim because
25 Plaintiffs did not allege facts to show the absence of probable cause. (ECF No. 31 at 7.)
26 Plaintiffs' additional allegations still do not show the absence of probable cause.
27 Plaintiffs' FAC does not include allegations describing the number and kind of
28 electronics, firearms, and documents seized, the legitimate purpose of possessing those

1 electronics and firearms, or why they kept nearly \$100,000 in cash in their home.
2 Accordingly, Plaintiffs' FAC remains deficient with respect to their Fourth Amendment
3 claim.

4 **VI. PLAINTIFFS' MOTION FOR EVIDENTIARY HEARING (ECF No. 50)**

5 Plaintiffs' Motion for Evidentiary Hearing will be denied because Plaintiffs do not
6 explain why an evidentiary hearing should be held. The motion simply states that
7 Plaintiffs move the Court to schedule an evidentiary hearing and cites to various filings.
8 (See ECF No. 50 at 1-2.)

9 **VII. LEAVE TO AMEND**

10 The Court grants leave to amend with respect to Plaintiffs' Fourth Amendment
11 claim because it is not inconceivable that Plaintiffs could amend their FAC to cure the
12 deficiencies that have resulted in dismissal of their claim. *See Krainski v. Nev. ex rel. Bd.*
13 *of Regents of Nev. Sys. of Higher Educ.*, 616 F.3d 963, 972 (9th Cir. 2010) ("Dismissal
14 without leave to amend is improper unless it is clear . . . that the complaint could not be
15 saved by any amendment.").

16 **VIII. CONCLUSION**

17 The Court notes that the parties made several arguments and cited to several
18 cases not discussed above. The Court has reviewed these arguments and cases and
19 determines that they do not warrant discussion as they do not affect the outcome of the
20 motions before the Court.

21 Accordingly, it is hereby ordered that Defendant's Motion to Dismiss (ECF No. 44)
22 is granted.

23 It is further ordered that Defendant's Motion to Stay (ECF No. 45) is denied.

24 It is further ordered that Plaintiffs' Motion for Evidentiary Hearing (ECF No. 50) is
25 denied.

26 It is further ordered that Plaintiffs are granted leave to amend their Complaint to
27 cure the deficiencies of the Fourth Amendment claim, if they so choose. The amended
28 complaint must be filed thirty (30) days after the entry of this Order. Failure to file an

1 amended complaint within this deadline will result in dismissal of the Fourth Amendment
2 claim with prejudice.

3 DATED THIS 13th day of March 2018.

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6 MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
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